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PEGUAM NEGARA MALAYSIA v. MKINI DOTCOM SDN BHD & ANOR

FEDERAL COURT, PUTRAJAYA
ROHANA YUSUF PCA
AZAHAR MOHAMED CJ (MALAYA)
B ABANG ISKANDAR CJ (SABAH & SARAWAK)
MOHD ZAWAWI SALLEH FCJ
NALLINI PATHMANATHAN FCJ
VERNON ONG LAM KIAT FCJ
ABDUL RAHMAN SEBLI FCJ
C [CIVIL APPLICATION NO: 08(L)-4-06-2020(W)]
2 JULY 2020

CIVIL PROCEDURE: *Contempt of court – Committal proceedings – Application to set aside leave to commence committal proceedings – Proceedings related to*
D *comments implicating Judiciary as a whole – Whether prima facie case made out – Whether presumption under s. 114A of Evidence Act 1950 rebutted – Whether non-compliance with O. 52 r. 2B of Rules of Court 2012 fatal – Whether application to set aside ought to be allowed*

E The respondents, by this application, sought to set aside the leave granted to the applicant to commence contempt proceedings against the respondents. The subject matter of the contempt proceedings was related to the comments which appeared in Malaysiakini on 9 June 2020.

Held (dismissing application)
F **Per Rohana Yusof PCA delivering the judgment of the court:**

(1) It was revealed that (i) the first respondent had facilitated the publication; (ii) the editorial policy allowed editing, removing and modifying comments; (iii) only upon being made aware by the police, that the first respondent removed the comments; and (iv) the editors of
G the first respondent reviewed postings on a daily basis. The respondents had thus published the impugned comments and a *prima facie* case had been made out. (paras 3 & 4)

(2) By virtue of s. 114A of the Evidence Act 1950, the respondents were presumed to have published the impugned comments. A *prima facie* case
H had been made out as: (i) the words were contemptuous as agreed by both parties; and (ii) *prima facie* there had been publication by Malaysiakini as these statements appeared on their news portal. (para 5)

(3) The non-compliance with O. 52 r. 2B of the Rules of Court 2012 was not fatal or prejudicial to the respondents. Further, the Federal Court
I was the right forum to commence these proceedings in view of the nature of the impugned comments which implicated the Judiciary as a whole, which also included the Chief Justice of the Federal Court. (para 6)

Bahasa Melayu *Headnotes*

Responden-responden, melalui permohonan ini, memohon untuk mengetepikan kebenaran yang diberi kepada pemohon untuk memulakan prosiding penghinaan terhadap responden-responden. Hal perkara prosiding penghinaan berkait dengan komen-komen yang diterbitkan dalam Malaysiakini pada 9 Jun 2020.

Diputuskan (menolak permohonan)
Oleh Rohana Yusuf PMR menyampaikan penghakiman mahkamah:

(1) Adalah didedahkan bahawa (i) responden pertama membantu penerbitan tersebut; (ii) polisi pengarang membenarkan penyuntingan, pembuangan dan pengubahan komen-komen; (ii) hanya selepas dimaklumkan oleh pihak polis, responden pertama membuang komen-komen tersebut; dan (iv) pengarang-pengarang responden pertama menyemak komen-komen setiap hari. Oleh itu, responden-responden telah menerbitkan komen-komen yang dipersoalkan dan kes *prima facie* dibuktikan.

(2) Berikutan s. 114A Akta Keterangan 1950, responden-responden dianggap telah menerbitkan komen-komen yang dipersoalkan itu. Kes *prima facie* telah dibuktikan kerana: (i) perkataan-perkataan tersebut bersifat menghina seperti yang dipersetujui pihak-pihak; dan (ii) *prima facie* terdapat penerbitan oleh Malaysiakini kerana kenyataan-kenyataan ini wujud dalam portal berita mereka.

(3) Ketidakpatuhan dengan A. 52 k. 2B Kaedah-kaedah Mahkamah 2012 tidak memudaratkan atau memprejudis responden-responden. Selanjutnya, Mahkamah Persekutuan adalah forum yang betul untuk memulakan prosiding ini memandangkan sifat komen-komen yang dipersoalkan yang membabitkan Badan Kehakiman secara keseluruhan, yang juga termasuk Ketua Hakim Mahkamah Persekutuan.

Legislation referred to:
Evidence Act 1950, s. 114A
Rules of Court 2012, O. 52 r. 2B

For the applicant - Suzana Atan & Narkunavathy Sundareson; SFCs
For the respondents - Malik Imtiaz Sarwar, Surendra Ananth & Khoo Suk Chyi; M/s Surendra Ananth
Watching Brief :
For the Bar Council - Joy Wilson Appukuttan; M/s KH Lim & Co
For the Centre for Independent Journalism and Gerakan Media - Yusmadi Yusoff; M/s Fahda Nur & Yusmadi
For the International Federation of Journalists (IFJ) and National Journalist Union of Malaysia (NJUM) - New Sin Yew; M/s AmerBON

Reported by S Barathi

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JUDGMENT
(encl. 22)

Rohana Yusuf PCA:

[1] This is our decision on whether the application by Malaysiakini in
B encl. 22 to set aside the leave granted by this court should be allowed. The subject of the contempt proceedings relates to the following comments which appeared in Malaysiakini on 9 June 2020:

(i) Ayah Punya kata: The High Courts are already acquitting criminals without any trial. The country has gone to the dogs;

C (ii) GrayDeer0609: Kangaroo courts fully operational? Musa Aman 43 charges fully acquitted. Where is law and order in this country? Law of the Jungle? Better to defund the judiciary!

(iii) Legit: This Judge is a shameless joker. The judges are out of control and the judicial system is completely broken. The crooks are being
D let out one by one in an expeditious manner and will running wild looting the country back again. This Chief Judge is talking about opening of the courts. Covid 19 slumber kah!

(iv) Semua Boleh – Bodoh pun Boleh: Hey Chief Justice Tengku Maimun Tuan Mat – Berapa JUTA sudah sapu – 46 kes corruption
E – satu kali Hapus!!! Tak Malu dan Tak Takut Allah Ke? Neraka Macam Mana? Tak Takut Jugak? Lagi – Bayar balik sedikit wang sapu – lepas jugak. APA JUSTICE ini??? Penipu Rakyat ke? Sama sama sapu wang Rakyat ke???

(v) Victim: The Judiciary in Bolihland is a laughing stock.

F **[2]** We are mindful that in the course of adjudicating on the setting aside application, we should not venture into or purport to decide the substantive merits of the committal application, which is properly the subject matter of the second stage of the adjudication.

[3] In respect of this issue, we are of the view that the following facts as
G revealed:

(i) The first respondent facilitates publication;

(ii) The editorial policy allowing editing, removing and modifying comments;

H (iii) Only upon being made aware by the police, the first respondent indeed removed the comments;

(iv) Evidence revealing that the editors of the first respondent review postings on a daily basis.

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[4] Based on all these facts, *inter alia*, we are of the view that the respondents had published the impugned comments and that a *prima facie* case had been made out.

[5] We are also of the view that, furthermore, by virtue of s. 114A of the Evidence Act 1950 the respondents are presumed to have published the impugned comments. The presumption is a rebuttable one. Hence, we find a *prima facie* case has been made out for the following reasons:

(i) The words read out above are contemptuous as agreed by both parties;

(ii) *Prima facie* there has been publication by Malaysiakini as these statements appeared on their news portal.

[6] The other grounds relied upon by the respondents to set aside the leave are the followings:

(i) O. 52 r. 2B of the Rules of Court 2012 – Procedural requirement

On the requirement of notice pursuant to O. 52 r. 2B which has not been complied with, on the facts of this case, we agree that the non-compliance is not fatal or prejudicial to the respondents.

(ii) Commencement at Federal Court

Looking at the nature of the impugned comments earlier elaborated, which implicate the Judiciary as a whole, which also include the Chief Justice of the Federal Court, we are of the view that this court is the right forum to commence these proceedings.

[7] On all the above reasons, the application is, hereby unanimously dismissed, and we will hear the merits of the Attorney General's application in encl. 19 on another date.

[8] Pending the final disposal of the matter, we hereby direct parties not to make any comment on this case to avoid *sub judice*.